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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench : Hon'ble Shri Vijay Kumar Shrivastava, J.

W.P.No.4456 of 2006

Petitioner — Smt Pramila Sinha, W/o Uday Ram Sinha, Aged 44 years, Disqualified President, Nagar Panchayat Abhanpur, District - Raipur (CG)

Versus

Respondents

1. Chhattisgarh State Election Commission through its secretary Mahanandi Khand Mantralay Parisar Raipur (CG)
2. State of Chhattisgarh Through Secretary Urban Development Department, Mantralay DKS Bhawan, Raipur (CG)
3. District Election Officer (Local Election) through Collector, Raipur (CG)
4. Deputy District Election Officer (Local Election) through Collector, Raipur (CG)
5. Chief Municipal Officer, Nagar Panchayat Abhanpur District Raipur (CG)
6. Mannulal Sinha Officiating President Nagar Panchayat Abhanpur District, Raipur (CG)

Present :- Shri Jitendra Nath Nande, counsel for the petitioner.

Shri BD Guru, counsel for respondents No.1 & 3 to 5.
Shri Utkarsh Verma, Dy Government Advocate for respondent No.2.
None for respondent No.6.

ORAL ORDER
(Passed on 02.02.2007)

This petition under Article 226/227 of the Constitution has been filed seeking following substantial reliefs:

- To issue writ of certiorari for quashing the orders contained in documents Annexure P-1 dated 25.05.2006 passed by State Election Commission and

Annexure P-2 dated 17.07.2006 passed by Chief Municipal Officer, Nagar Panchayat, Abhanpur.

- To issue writ of mandamus directing the respondents to consider the accounts expenditure filed by the petitioner in accordance with law.

2) Petitioner was elected in the month of December 2004 as President of Nagar Panchayat, Abhanpur, District - Raipur (CG). Though she was elected representative, she was disqualified by the State Election Commission vide impugned order (Annexure P/1) dated 25.05.2006 for five years for being elected as President or Councilor of the Municipality/Nagar Panchayat on account of failure on her part to deposit the election expenditure in accordance with the rules. Pursuant to order passed by the Election Commission dated 25.05.2006, the Chief Municipal Officer, Nagar Panchayat, Abhanpur, District - Raipur issued an order dated 17.07.2006 (Annexure P/2) directing the Vice President Mannulal Sinha to work as president. Respondents contested the petition, except respondent No.6, who did not appear to contest the petition.

3) Admittedly, vide Chhattisgarh Municipalities (Amendment) Act No.10 of 2004, following provisions have been incorporated :-

> धारा 32घ. निरर्हता की अवधि को कम करना अथवा समाप्त करना – धारा 32–ग के खण्ड (ख) में पारित किसी आदेश के प्रकाशन दिनांक के तीस दिन के अंदर आवेदन किए जाने पर, राज्य निर्वाचन आयोग , कारणों को लिपिबद्ध करते हुए, ऐसी निरर्हता की अवधि को कम या समाप्त कर सकेगा।

3) From bare reading of the above provision, it is evident that any order passed under Section 32 (C) by the Election Commission imposing disqualification for failure to lodge account of election expenses can be re-considered by the State Election Commission on sufficient grounds. Undisputedly, petitioner made representation invoking the above provision for re-consideration, but, unfortunately, though there was recommendation of the Collector supporting her representation, State Election Commission

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without assigning any reason, rejected the same; by passing a non-speaking order and that order has not been challenged before this Court.

4) Once the petitioner raised her grievances against Annexure P/1 before the State Election Commission for setting aside her disqualification and the Commission decided her representation, she has only remedy left out either to challenge the subsequent order under Article 226 of the Constitution or to take other recourse in accordance with law.

5) So far as Annexure P/2 i.e. an order passed by the Chief Municipal Officer is concerned, admittedly he has no such power to direct the Vice President to work in place of President. It is pertinent to mention here that, Section 52 of the Act itself provides the duties of the Vice President, according to which Vice President is required to work.

6) In view of the above, so far as order dated 25.05.2006 (Annexure P/1) is concerned, that order can not be interfered with, but, Annexure P/2 dated 17.07.2006 i.e. an order passed by the Chief Municipal Officer, Nagar Panchayat, Abhanpur, being without jurisdiction is liable to be quashed.

7) In the result, the petition is partly allowed. The order dated 17.07.2006 (Annexure -P/2) is quashed. Without expressing any opinion on Annexure P/1 (Order dated 25.05.2006) or subsequent order passed by the State Election Commission on petitioner representation for setting aside the disqualification it is observed that if petitioner so advised, may challenge the order passed by the State Election Commission on her representation, in accordance with law by invoking appropriate jurisdiction and if remedy lies in filing review, she may also file the same before the State Election Commission.

Sd/-
V.K.Shrivastava
Judge

padma